Supreme Court, U.S.
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No. 84-2013

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DUQUESNE LIGHT COMPANY, *et al.*,
Petitioners,

v.

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA

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QUESTIONS PRESENTED

Respondent, the International Union, United Mine Workers of America, does not agree with petitioners' statement of the questions presented. The only questions properly presented by the Third Circuit's order vacating the summary judgments granted to petitioners, and remanding these actions for further pre-trial proceedings, are as follows:

1. Where the necessary facts were either contested, or not in evidence, did the court of appeals properly vacate summary judgments invalidating a provision of a collective bargaining agreement under § 8(e) of the NLRA, 29 U.S.C. § 158(e)?

2. Did the court of appeals properly require an inquiry into the purpose and function of a collectively bargained provision challenged under § 8(e) of the NLRA, 29 U.S.C. § 158(e), where the trial court had failed to consider or establish any facts regarding the purpose for which the Clause was negotiated, and the manner in which it functions?

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BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA

The respondent, International Union, United Mine Workers of America ("the Union" or "the UMWA"), submits that the petition for a writ of certiorari to review the intermediate order entered by the United States Court of Appeals for the Third Circuit in these cases on February 27, 1985, should be denied. The Union concurs with petitioners' discussion of the *Opinions Below*, *Jurisdiction*, and the *Statute Involved*.

I. COUNTERSTATEMENT OF THE CASE

A. The Pre-Trial Status Of This Litigation

The 1974, 1978, and 1981 National Bituminous Coal Wage Agreements (collectively referred to as "the NBCWA") establish pension and benefit plans for coal miners and their families. Each signatory employer is obligated by the produced coal clause of the NBCWA, Article XX(d)(1), to make contributions to the plans based on its production measured by employee hours worked and tons of coal mined. In addition, Article XX (d)(1)(v) of the NBCWA, the purchased coal clause, requires an equivalent contribution on tons of coal purchased by each signatory as to which no produced coal contribution has previously been made. App. 4a.[1] Petitioners are signatory to the NBCWA and assert that the purchased coal clause is, on its face, a "union signatory" provision violative of 8(e) of the National Labor Relations Act, 29 U.S.C. § 158(e).[2]

Most of these cases began as actions to recover contributions due under the purchased coal clause. In those cases, the delinquent signatories interposed the affirmative defense of the Clause's illegality under § 8(e), and the UMWA intervened to defend its collective bargaining agreements. Several signatory employers initiated actions or brought counterclaims against the UMWA and the respondent plan trustees ("the Trustees") to obtain, variously, declarations of the Clause's illegality under § 8(e), injunctive relief, and damages. After the cases were consolidated, nineteen of the twenty-four delinquent coal companies involved in this litigation imme-

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[1] References to the Petition, its Appendix, and Joint Appendix filed by the parties in the court of appeals are as follows: "Pet. ——"; "App. ——"; and "J.A. ——".

[2] The petitioners will also be referred to as "operators" or "coal companies"; Article XX(d)(1)(v) of the NBCWA will be referred to as "the purchased coal clause" or "the Clause".

diately moved for summary judgment on their common contention that the Clause is a prohibited "union signatory" clause. Pending a decision on their summary judgment motions, the coal companies obtained an order staying discovery. App. 4a-5a; J.A. 575.

Petitioners' challenge to the purchased coal clause comes to this Court bereft of any factual development. The delinquent signatories supported their summary judgment motions solely with their reading of the Clause, arguing that its wording plainly exhibits the essential characteristic of a "union signatory" provision—it applies only to purchases from companies who have no agreement with the UMWA.[3] The operators expressly disclaimed reliance upon any other facts. J.A. 455-56, 575.

The Union and the Trustees vigorously disputed the factual and legal premises underlying the operators' portrayal of the Clause as a "union signatory" device. They emphasized that a wide gap exists between the high

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[3] The purchased coal clause provides:

> ". . . during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made . . . ."

App. 4a; J.A. 862.

The court of appeals correctly described the Clause as entirely neutral on its face:

> "When read in conjunction with the 'produced coal clause,' the effect [of the purchased coal clause] is to require an employer-signatory to pay an identical contribution to . . . [the plans] whether the coal was extracted from the employer's mines or was bought from an operator that had not already paid the assessed tonnage." App. 4a.

labor costs imposed by the NBCWA and the much lower labor costs of all other operators—a group which includes non-union operators, operators signatory to contracts with unions other than the UMWA, and operators signatory to UMWA contracts other than the NBCWA. App. 5a; J.A. 933, 937-40, 960-74, 990-91, 993-95, 996-1001, 1006-12, 1345-1428; *Industry Wage Survey: Bituminous Coal, July 1982*, U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin 2185 (1983). Inevitably, this large labor cost differential creates a compelling economic incentive for NBCWA signatory operators to subcontract the production of coal to non-signatory operators—through coal purchases—instead of mining coal with their own employees. To eliminate this financial temptation to subcontract collective bargaining unit work, the purchased coal clause imposes a surcharge which counterbalances the sizable differential between NBCWA signatories' labor costs and the much lower labor costs enjoyed by other operators. App. 5a. The Clause thus possesses the fundamental attribute of a "union standards" provision because it preserves the work of each individual NBCWA signatory's miners by removing the economic incentive to subcontract the production of coal to operators who do not incur labor costs equal to those imposed by the NBCWA.

The district court ignored this evidence, entered summary judgment invalidating the Clause and permanently enjoined its enforcement. App. 50a-51a. Reviewing the district court's decision under commonly accepted and basic labor law and summary judgment principles, a unanimous panel of the Court of Appeals for the Third Circuit decided that ". . . the prohibited secondary objective is not revealed by the language of the collective bargaining agreement here, and further inquiry is necessary."[4] App. 12a. A court that has never hesitated

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[4] The opinion was authored by Circuit Judge Weis. Circuit Judge Hunter and District Judge Thompson joined in Judge Weis' opinion.

to enforce the mandates of § 8(e), the Third Circuit remanded this case for further proceedings to establish the facts about the purpose for which the Clause was negotiated and the manner in which it is applied. App. 17a; *see, e.g., A. Duie Pyle, Inc.* v. *NLRB*, 383 F.2d 772 (3d Cir. 1967), *cert. denied sub nom. Teamsters* v. *A. Duie Pyle, Inc.*, 390 U.S. 905 (1968); *Amax* v. *NLRB*, 614 F.2d 872 (3d Cir.), *rev'd on other grounds*, 453 U.S. 322 (1980). Petitions for rehearing were denied, App. 52a-57a, and this Petition followed.

B. The Coal Industry Supports The Legality Of The Clause

The delinquent coal companies imply that they speak for all UMWA organized coal operators. *E.g.*, Pet. 5. Yet the principal collective bargaining agent for the coal industry, the Bituminous Coal Operators Association ("BCOA"), filed below a brief *amicus curiae* in support of the legality of the purchased coal clause. Although the BCOA resisted the Clause at the bargaining table because it restricts management's discretion to purchase and entails additional costs, it vigorously defends the Clause as a lawful work preservation measure.

The Petition refers to industrial unrest related to these proceedings. Pet. 15. The BCOA and the Union are not aware of any such unrest.[5] In 1984, the Union and the BCOA concluded a successor agreement to the 1981 NBCWA without any interruption of production and have depended entirely on the orderly administration of justice for resolution of the Clause's legality.

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[5] A stay of the Third Circuit's mandate has preserved the district court's injunction against collection of the purchased coal contribution. The ban on collecting the contribution will not result in reductions of pensioners' benefits. No unrest because of benefit reductions resulting from this litigation is, thus, conceivable.

II. REASONS FOR DENYING THE WRIT

A. The Opinion Below Faithfully Follows This Court's Past And Recent Decisions Construing Section 8(e), And Presents No Important Issue Of Statutory Interpretation

Petitioners stake their entire case here, as they did below, on the contention that the purchased coal clause is, *per se*, a "union signatory" clause, because its applicability turns solely *"on the basis of union status."* Pet. 12 (Emph. supp.). Below, the UMWA and the Trustees demonstrated that the Clause, on its face and as applied to the realities of the bituminous coal industry, functions as a "union standards" provision to preserve collective bargaining unit jobs at each NBCWA operation.

They showed, first, that the Clause applies to all purchases of coal by NBCWA operators from those producers who, without regard to their "union status", are able to sell their coal more cheaply because they do not bear the uniquely high labor costs of the NBCWA. Such operators include two classes of UMWA signatories: (1) NBCWA operators who evade their contractual obligations to contribute to the plans, and (2) operators signatory to collective bargaining agreements with the UMWA which do not require contributions in amounts equal to those imposed by the NBCWA. Hence, the Clause does not exempt purchases from UMWA producers, nor apply, in the fashion of a "union signatory" clause, solely to purchases from operators who have no UMWA agreement.

Second, the UMWA and the Trustees established that the wide differential between the price of labor under the NBCWA and the labor costs of other mine operators induces NBCWA signatories to trim back their production and satisfy their customers' demands with substandard coal. This form of subcontracting diminishes opportunities for work at each NBCWA operation. J.A. 736-

38. By imposing a charge equivalent to the major component of NBCWA labor costs—its fringe benefit costs—on purchases of substandard coal by NBCWA signatories, the Clause, like all "union standards" provisions, removes labor cost considerations from subcontracting decisions.

Petitioners' principal argument for invoking this Court's review, on this record, is that the court of appeals approved a "radically different approach" to § 8(e) when it rejected their depiction of the Clause as a *per se* "union signatory" provision. Pet. 13. In rejecting petitioners' *per se* "union signatory" argument, however, the Third Circuit relied squarely on the "totality-of-the-circumstances" test, *NLRB* v. *Pipefitters Local 638*, 429 U.S. 507, 524 (1977), for determining whether an agreement was negotiated for the purpose of preserving collective bargaining unit work, or for secondary objectives. This test, first enunciated in *National Woodwork Manufacturers Assoc.* v. *NLRB*, 386 U.S. 612, 644 (1967), was most recently affirmed in *NLRB* v. *International Longshoremen's Assoc.* (*"ILA II"*), 53 U.S.L.W. 4919, 4923 (U.S. June 27, 1985) (No. 84-861), and mandates an inquiry into "all the surrounding circumstances" of an agreement to ascertain whether its purpose is primary or secondary.[6]

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[6] The "totality-of-the-circumstances" test applied in this case is so firmly embedded in the appellate precedents that petitioners do not even assert any circuit conflict. *See, e.g., Carrier Air Conditioning* v. *NLRB*, 547 F.2d 1178, 1181 (2d Cir. 1976), *cert. denied*, 431 U.S. 974 (1977); *A. Duie Pyle, Inc.* v. *NLRB*, 383 F.2d 772, 775 (3d Cir. 1967), *cert. denied sub nom. Teamsters* v. *A. Duie Pyle, Inc.*, 390 U.S. 905 (1968); *Electro-Coal Transfer Corp.* v. *General Longshore Workers*, 591 F.2d 284, 290-91 (5th Cir. 1979); *American Boiler Manufacturers Assoc.* v. *NLRB*, 404 F.2d 556, 561 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970); *Frito-Lay, Inc.* v. *Retail Clerks Union Local No. 7*, 629 F.2d 653, 659-60 (10th Cir. 1980).

The National Labor Relations Board also conducts an inquiry into the purpose and function of a provision challenged under § 8(e),

Consistent with these rules, the Third Circuit performed the following black letter analysis:

> 1. A clause is prohibited under § 8(e) if its "*purpose*" is secondary; where a secondary purpose is "*apparent*" from the clause's "*necessary effect*," "a clause may be held invalid *per se*." App. 11a (Emph. supp.).
>
> 2. "But it is often difficult . . . to determine from the wording of the clause the union's 'tactical object,' [*National*] *Woodwork Manufacturers Assoc.*, 386 U.S. at 645, or 'design,' *Amax Coal*, 614 F.2d at 886. *More than the document itself is generally needed for that analysis.*" App. 11a (Emph. supp.). ". . . [E]ven if invalidity is not apparent because on its face the clause seems to comply with § 8(e), an 'as applied' violation may surface after more detailed factual development" App. 12a (Citation omitted). ". . . [*T*]*he prohibited secondary object is not revealed by the language of the collective bargaining agreement here, and further inquiry is necessary.*" App. 12a (Emph. supp.).
>
> 3. The court then provides evidentiary guidelines for determining whether ". . . economic factors may combine to exert pressure . . . on a non-union producer to recognize the union" or whether "[t]here *may* be other *factual* settings in which none of the justifications for work preservation . . . exist . . . ." App. 12a-14a (Emph. supp.).

The Third Circuit's focus, from the outset, on the purpose animating the Clause is faithful to this Court's decisions. The opinion simply cannot be read, as petitioners contend, to defy the holding in *NLRB* v. *Denver Building Trades Council*, 341 U.S. 675 (1957); the court of appeals did not announce a rule that "*other lawful objects*" will save a clause that has an illegal object.

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even where "[a] more blatant union signatory clause would be difficult to imagine." *E.g., District 2, Marine Engineers Beneficial Assoc.*, 261 NLRB 345, 348-51 (1982).

Pet 8-9 (Emph. supp.). Judge Weis expressly affirmed that a provision must have ". . . *no* forbidden secondary purpose to affect the employment relations of an outside employer . . . ." App. 9a (Emph. supp.).

A union's "tactical object" or "purpose" in negotiating a clause has always been the "touchstone" determining whether it is secondary or primary. *National Woodwork*, 386 U.S. at 644-45; *NLRB* v. *International Longshoremen's Assoc.*, (*"ILA I"*), 447 U.S. 490, 504, 507 n.22, 523 (1980); *ILA II*, 53 U.S.L.W. at 4923-24. A recent District of Columbia Court of Appeals decision, joined in by both Judges Bork and Mikva, puts it succinctly:

> "The term 'object' as it is found in the statute, or the words 'tactically calculated . . . objectives' as the Supreme Court paraphrased it in *National Woodwork*, are generally taken as synonyms for *'purpose.'* On that basis, it has been held . . . that the union's 'improper motive and intent' must be established . . . ." *United Scenic Artists, Local 1829* v. *NLRB*, 762 F.2d 1027, 1032-33 (1985) (Emph. supp.).

Because the Third Circuit could not discern any prohibited purpose on the face of the Clause, it concluded that "more than the document itself is . . . needed for analysis." App. 11a. Since the facts surrounding the Clause had not been "judicially established", or even considered by the trial court, the appeals court could not make that analysis in the first instance.[7] App. 14a.

By remanding these cases for an inquiry into whether the Clause operates to preserve the work of the collective bargaining unit or to pressure neutrals to recognize the Union, Judge Weis adhered to the well settled distinction between primary "union standards" and secondary "union signatory" clauses:

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[7] Petitioners may not, of course, rely on adverse inferences on summary judgment. *Adickes* v. *Kress & Co.*, 398 U.S. 144, 157-58 (1970); *U. S.* v. *Diebold*, 369 U.S. 654, 655 (1962).

> "*A union standards clause is designed to inhibit subcontracting of work that would otherwise be performed by members of the bargaining unit.* This court described such an agreement in *A. Duie Pyle* as 'the exaction of requirements designed to protect union standards against substandard competition which might be an incentive for an employer to deprive his unionized employees of work.' A provision of that nature serves 'a primary rather than a secondary objective . . . .'
>
> "Falling on the other side of the line and violative of § 8(e) are *'union signatory clauses.'* In *A. Duie Pyle*, we held that *a collective bargaining agreement may not prohibit an employer from contracting with enterprises or individuals that are not unionized.*
>
> > " 'As in the case of secondary boycotts generally, *a union may not employ a collective bargaining agreement with one employer as a means of effectuating its object to coerce another employer to unionize.*' "
>
> App. 9a-10a (Emph. supp.) (Citation omitted).

See also NLRB v. *National Maritime Union of America*, 486 F.2d 907, 912-13 (2d Cir. 1973), *cert. denied*, 416 U.S. 970 (1974); *Berman Enterprises, Inc.* v. *Local 333*, 644 F.2d 930, 937 (2d Cir.), *cert. denied*, 454 U.S. 965 (1981); *Amax* v. *NLRB*, 614 F.2d at 887, *rev'd on other grounds*, 453 U.S. 322 (1980); *George Ryan Co., Inc.* v. *NLRB*, 609 F.2d 1249, 1254 (7th Cir. 1979); *NLRB* v. *Hotel & Restaurant Employees Union Local 531*, 623 F.2d 61, 67 (9th Cir. 1980); *A. Duie Pyle, Inc.* v. *NLRB*, 383 F.2d at 776-78; *Meat and Highway Drivers* v. *NLRB*, 335 F.2d 709, 716 (D.C. Cir. 1964); *Orange Belt District Council of Painters, No. 48* v. *NLRB*, 328 F.2d 524, 538-40 (D.C. Cir. 1964); *Truck Drivers Union Local No. 413* v. *NLRB*, 334 F.2d 539, 548 (D.C. Cir.), *cert. denied*, 379 U.S. 916 (1964).

The facts proffered by the Union and the Trustees affirm that the purchased coal clause behaves as a "union standards" provision by counteracting the incentive to subcontract generated by the labor cost advantage enjoyed by operators not bound by the NBCWA. By appealing for "[a] bright line rule that fixed penalty clauses are illegal," petitioners concede that they cannot fit the Clause into a *per se* "union signatory" mold. Pet. 13. Such a "bright line", fashioned merely to absolve petitioners from their proof burdens, is not warranted. The Third Circuit correctly applied the bright line already drawn by the uniform precedents—that demarcating "union signatory" from "union standards" clauses.

That the Clause inhibits the subcontracting transactions of signatories does not transform it into a "union signatory" measure. Pet. 12. If the surrounding circumstances reveal, as this record does, that the Clause is designed and functions to diminish the threat to job security posed by the incentive to subcontract based on labor cost considerations, the Clause is primary, even though it "may seriously affect neutral third parties." *NLRB* v. *Local 825, International Union of Operating Engineers*, 400 U.S. 297, 303 (1971); *ILA II*, 53 U.S.L.W. at 4923-24 & n.18, 4927; *ILA I*, 447 U.S. at 507-08 & n.22; *NLRB* v. *Retail Store Employees Union, Local 1001*, 447 U.S. 607, 614 (1980); *Local 761, International Union of Electrical, Radio, and Machine Workers* v. *NLRB*, 366 U.S. 667, 673-74 (1961).

Thus, the court of appeals did not bless "a new category of provisions . . . neither lawful nor unlawful *ab initio* . . . ." Pet. 13. By requiring an inquiry into the facts rather than summarily condemning the Clause on unsupported inferences, Judge Weis exhibited awareness that "Congress, in enacting § 8(e), . . . 'had no thought of prohibiting agreements directed to work preservation.'" *ILA I*, 447 U.S. at 506 (quoting *National Woodwork*, 386 U.S. at 640). This broad approval of

all work preservation agreements compels rejection of the invitation to judge the purpose of the Clause and the manner in which it functions oblivious to the labor cost advantage enjoyed by coal operators not signatory to the NBCWA, and the effect of that economic reality on job opportunities at NBCWA operations. *ILA II*, 53 U.S.L.W. at 4924-25; *ILA I*, 447 U.S. at 506, 523; *National Woodwork*, 386 U.S. at 644 & n. 38.

Petitioners describe the final step of the analysis, the Third Circuit's review of their arguments against the Clause, App. 12a-14a, as approval of a provision with "foreseeable" secondary applications. Pet. 13, 18. Judge Weis reviewed these arguments merely to guide the trial court and the litigants on remand, correctly concluding and also illustrating that the applications of the purchased coal clause relied upon to characterize it as a "union signatory" clause cannot be judicially established in the absence of a "fact-based" inquiry. *See ILA II*, 53 U.S.L.W. at 4929. The court of appeals properly required proof of such facts prior to any condemnation of the Clause.

This routine affirmation of traditional methods for determining the legality of collective bargaining contracts challenged under § 8(e) presents no conflict with this Court's decisions. Nor is any fundamental question of statutory interpretation posed by the court of appeals' insistence upon an inquiry into the purpose and function of the Clause.

B. This Case Is Not Ripe For Review On the Merits

Applying the *National Woodwork* test, the court of appeals found the record insufficient to reach petitioners' claim that the Clause operates as a "union signatory" provision. The ruling below ". . . is strictly a pre-trial order that decides only one thing—that the case should go to trial." *Switzerland Cheese Assoc.* v. *Horne's Market*, 385 U.S. 23, 25 (1966). This litigation is, accord-

ingly, not ripe for the merits ruling sought by the coal companies.

By eschewing any factual development of their contentions, the delinquent operators have presented a record to this Court devoid of any facts to support their portrayal of the Clause as a "union signatory" device. To condemn the purchased coal clause on a record that only confirms its primary purpose and is barren of any secondary applications would frustrate the Union's lawful collective bargaining efforts to preserve its members' jobs and thus ". . . jeopardize the other, non-secondary boycott purposes of the labor laws." *United Scenic Artists* v. *NLRB*, 762 F.2d at 1037.

The lines drawn by the Third Circuit, while not "glaringly bright," *Local 761, I.U.E.* v. *NLRB*, 366 U.S. at 673, are no more subtle than the statute engendering them.[8] Petitioners' complaints about the cost and duration of the remand, Pet. 13, 19, are inconsistent with their decision to refrain from introducing into this record any facts regarding the "many . . . foreseeable" secondary applications of the Clause. Pet. 13, 18-19; J.A. 455-56. Ten years of experience under the NBCWA must surely have furnished evidence to support the hypothesized secondary applications of the Clause, if such evidence exists. To conserve the resources of the courts and the litigants, petitioners should have developed such evidence below.

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[8] The complaint that the Third Circuit has burdened petitioners by requiring a review of each "transaction," Pet. 19, is specious. By their very nature, all "union standards" clauses require a case-by-case examination of the relative labor costs involved in subcontracting decisions. Federal courts are not unequipped to handle such details expeditiously and economically. *See* FED. R. CIV. P. 16(c). For example, commercial lawsuits often encompass many separate "transactions" but are, nonetheless, grist for the judicial mill.

Because the purchased coal clause resides in a multi-employer contract, any determination of the merits should await judicial consideration of the industrial realities which make the Clause necessary.[9] Both the BCOA and the Union, cognizant of the "economic personality" of the bituminous coal industry, affirm the legality of the purchased coal clause as a collectively bargained measure designed to preserve jobs from "the threat of displacement" caused by the labor cost differential between NBCWA operators and other coal operators, including those signatory to other UMWA agreements, agreements with other unions, or no union agreement at all.[10] *National Woodwork* v. *NLRB*, 386 U.S. at 644

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[9] Contrary to the Petition, at 17, the *ILA* cases came to this Court initially on a sharp and extensive circuit conflict, and not merely because the container rules were part of a "national" contract. *ILA I*, 447 U.S. at 493. Both *ILA I* and *ILA II* were heard after a substantial factual record was developed by the National Labor Relations Board.

[10] Petitioners invoke the history of litigation over the Clause's predecessors. Pet. 15-17. However, that history counsels awaiting a full record. Only in one case, *Riverton Coal Co.* v. *NLRB*, 453 F.2d 1035 (6th Cir.), *cert. denied*, 407 U.S. 915 (1972), was the attack ultimately successful. The other cases affirm that the predecessors of purchased coal clause are "union standards" clauses. *W. A. Boyle*, 179 NLRB 479, 480 (1969), *appeal dismissed*, 468 F.2d 1139 (D.C. Cir. 1972); *UMWA (Dixie Mining)*, 188 NLRB 753, 755 (1971). The delay in this approval of the Clause's antecedents resulted from the Board's refusal to accede to the presumptive validity of "union standards" agreements in general, and not from proven secondary application. *See, e.g., Truck Drivers Union Local No. 413* v. *NLRB*, 334 F.2d at 548.

Riverton, as petitioners acknowledge, does not conflict with the decision below. Pet. 17 n.8. The Third Circuit correctly described *Riverton* as turning on trial evidence showing that the union sought, by means of the clause challenged there, to force Riverton to pressure its affiliates to recognize the UMWA. App. 15a. Indeed, the *Riverton* court found that the union had endeavored, independent of the Clause, to force Riverton to compel its non-signatory subcontractors to sign UMWA agreements. 453 F.2d at 1038-39. No such evidence has been adduced in this case.

n.38. A "definitive" ruling on the Clause's legality should not issue blind to the facts informing the bargainers.

CONCLUSION

The ruling below is purely interlocutory, is faithful to this Court's decisions and presents no important question of statutory interpretation. No other consideration favoring this Court's review under its Rule 17 has, or can be, invoked. The petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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